

## **REMARKS**

Claims 1-4 and 16-18 are presently pending in the application. Claims 1 and 2 have been amended to clarify the invention. Claims 16-18 have been added. No new matter has been added and support for the amendments to the claims can be found in the specification and drawings. In view of the above amendments and arguments presented hereinbelow, Applicants respectfully submit that these claims are now in condition for allowance.

### **Claim Rejections -- 35 U.S.C. § 102(b)**

Claim 1 stands rejected under Section 102(b) as being anticipated by Streibel U.S. Patent No. 4,589,159 ("Streibel"). Applicants respectfully traverse this rejection and submit that Streibel fails to disclose or suggest the claimed invention.

In accordance with an aspect of the invention as set forth in claim 1, as amended, there is provided a new and improved sanitary toothbrush, comprising:

a handle having an upper surface, a lower surface, a distal end, a proximal end, and an elongated intermediate portion therebetween;

the distal end of the handle having a brush unit generally comprised of a rectangular head portion adjacent and integral thereto, the head portion having an upper surface with a plurality of bristle tufts extending outward therefrom; and

*the entire proximal end of the handle generally comprised of a curved shape in the form of a hook for hanging the toothbrush, said curved proximal end being of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position.*

(emphasis added).

The Examiner contends that Streibel discloses "...the proximal end of the handle generally comprised of a curved shape in the form of a hook 12 (see Fig. 1 and col. 3,

lines 59-63) for hanging the toothbrush, the curved proximal end being of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position on wires 15 (see Fig. 1).” Office Action at page 3, ¶5. This contention is without merit. It is axiomatic that in order to support a proper Section 102 rejection, every element recited in the claims must be found in the cited reference. Clearly, Streibel does not anticipate claim 1 (as amended) because it fails to disclose a toothbrush where “*the entire proximal end of the handle [is] generally comprised of a curved shape in the form of a hook....*” To the contrary, Fig. 1 of Streibel shows a toothbrush having an “indicia-bearing member 5” that defines “...two substantially hook-shaped projections 12 which are spaced apart from the neighboring marginal portions 2b, 2c by relatively shallow sockets.” See Col., 3, lines 57 – 63. For this reason, Streibel does not anticipate claim 1. Applicants further submit that Streibel fails to suggest the invention of claim 1. The instant claim calls for “...said curved proximal end being of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position.” Streibel teaches away from this feature since the cited structure contains two hooked shaped projections that form relatively narrow sockets to facilitate “...more convenient suspension in or on very simple supports, e.g., the aforementioned support with pairs of parallel wires 15 or cords which can be resorted to irrespective of whether or not the indicia-bearing member is provided with specially designed (e.g., hooked shaped) suspension facilitating means.” See Col. 5, lines 13 – 18. There is nothing in Streibel that suggests the implementation of a curved proximal end which enables the toothbrush to be suspended in the manner claimed by Applicants. Accordingly, it is respectfully submitted that claim 1 is patentable over Streibel.

Claims 1 and 2 stand rejected under Section 102(b) as being anticipated by Barnes U.S. Patent No. 1,476,579 (“Barnes”). Applicants respectfully traverse this rejection and submit that Barnes fails to disclose or suggest the claimed invention.

The Examiner contends that Barnes discloses a toothbrush having a “...curved proximal end being of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position.” Office Action at page 4, ¶6. Applicants respectfully disagree. Barnes discloses “...a gently curved handle 1 with a curved finger rest extremity 2....” Col. 1, line 56 – Col. 2, line 57. This is illustrated in Fig. 5. There is nothing in Barnes that discloses or suggests “a curved proximal end being of sufficient size, dimension and radius” in the manner claimed by Applicants. To the contrary, beyond the cursory description of the proximal end functioning as a finger rest, Barnes is completely silent as to the configuration of the proximal end. Furthermore, Barnes explicitly discloses “...a hole 3 by means of which it may be suspended from a small hook when not in use.” See Col. 2, lines 58 – 60. Thus, the proximal end in Barnes need not be of sufficient size, dimension and radius to enable the toothbrush to be hung or suspended in the manner claimed by Applicants because the hanging function in Barnes is accomplished in a completely different way. The Examiner’s contention that “Barnes ‘579 still meets the recited language of claim 1 notwithstanding this means of hanging or suspension” and that “...Barnes toothbrush could well be hung in the manner of Applicant’s invention simply because of Barnes’ hook structure (Fig. 1)” is misplaced. See Office Action at page 4, ¶6. There is nothing in Barnes that mentions a “hook” structure. Moreover, if the proximal end in Barnes was configured as called for in claim 1, there would be no need for a hole to be defined in the

proximal end to enable the apparatus to be suspended from a small hook in accordance with the explicit teachings in Barnes. Accordingly, in view of the above it is respectfully submitted that claims 1 and 2 are patentable over Barnes.

**Claim Rejections -- 35 U.S.C. § 103(a)**

Claims 3 and 4 stand rejected under Section 103(a) as being unpatentable over Barnes in view of Atkins et al. U.S. Patent No. 5,353,464 (“Atkins”). Applicants hereby reiterate the argument above distinguishing Barnes from claims 1 and 2, and respectfully submit that the combination of Barnes and Atkins fails to disclose or suggest the claimed invention.

As discussed above, Applicants submit that Barnes fails to teach or suggest a curved proximal end being of sufficient size, dimension and radius to enable the toothbrush to be hung or suspended.

Atkins discloses a toothbrush having a handle in the shape of an animal. In particular, Atkins teaches the following:

In a preferred embodiment of this invention, the animal embodied in the construction of the handle portion is a quadrupedal animal such that the front leg portion consists of two legs and the rear leg portion consists of two legs. Most preferably, the quadrupedal *animal is configured in a standing (or running) position with all four such legs extending in a generally downward direction relative to the body of the animal to thereby serve as the portion of the handle adapted to support the toothbrush, when not in use, on a flat supporting surface* with the bristles of said brush head portion spaced from such supporting surface. Col. 3, lines 45 – 56

(emphasis added).

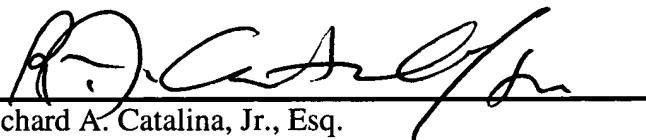
The configuration described in the foregoing is illustrated in several alternative embodiments depicted in the drawings.

The Examiner contends that it would be “...obvious to one of ordinary skill in the art to have modified the Barnes’ handle such that the elongated intermediate portion is designed and shaped to represent a tailed animal, with the curved proximal end of the handle of the toothbrush forming the tail....” See Office Action at page 5, ¶8 (emphasis in original). This contention is without merit. Atkins teaches an animal body *containing legs that function as a support for the entire assembly* when the toothbrush is not in use. None of the disclosed embodiments suggest the use of a tail configured in the shape of a hook that would enable suspension of the toothbrush. As discussed above, Barnes fails to disclose a proximal end having sufficient size, dimension and radius to enable the toothbrush to be hung or suspended. Applicants therefore respectfully submit that no motivation exists to combine the teachings of Barnes and Atkins. To the contrary, even if, assuming *arguendo*, that these references are properly combinable, such combination teaches away from the claimed invention. In Atkins, the toothbrush is supported by the feet of the animal forming the intermediate portion. In Barnes, a hole in the finger rest extremity to enable the toothbrush to be supported on a hook. Thus, in the manner asserted by the Examiner, the modified Barnes toothbrush with an animal shaped intermediate portion still would not be constructed and arranged with a “curved proximal end of the toothbrush forming the tail of the animal,” where the proximal end is “of sufficient size, dimension and radius to allow for the hanging or suspension of the toothbrush in an upside down position” as claimed. In view of the above, it is respectfully submitted that claims 3 and 4 (as well as new claims 16-18) are patentable over the combination of Barnes and Atkins.

Based on the foregoing, Applicant submits that claims 1-4 and 16-18 are in condition for allowance and allowance of these claims at an early date is solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 501472. The Examiner is invited to contact the undersigned at (732) 380-0080 to discuss any matter concerning this application.

Respectfully submitted,  
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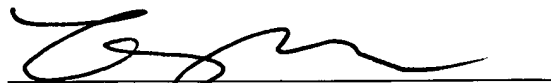
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